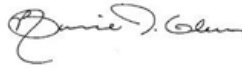

Issued Date: JANUARY 10, 2025

From: Interim Director Bonnie Glenn
Office of Police Accountability



Case Number: 2024OPA-0301

Allegations of Misconduct & Director's Findings

Named Employee #1

- 1. Allegation #1:** 6.010 – Arrests, 6.010-POL-1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest
Finding: Not Sustained - Lawful and Proper (Expedited)
- 2. Allegation #2:** 6.010 – Arrests, 6.010-POL-1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest
Finding: Not Sustained - Training Referral
- 3. Allegation #3:** 5.001 – Standards and Duties, 5.001-POL-10. Employees Will Strive to be Professional
Finding: Not Sustained - Training Referral
- 4. Allegation #4:** 14.090 – Crowd Management, Intervention, and Control (Effective April 24, 2023)
Finding: Sustained

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections may be written in the first person.

Executive Summary:

On July 16, 2024, Named Employee #1 (NE#1), an SPD captain, responded to a climate protest occurring near Amazon headquarters. NE#1 operated an unmarked police vehicle into the protest site and ordered protesters to vacate the street. Multiple complainants alleged that NE#1 behaved unprofessionally, escalated the situation, and endangered the protesters. NE#1 arrested Community Member #1 (CM#1), a police liaison, for obstruction and pedestrian interference. The complainants alleged that NE#1 unlawfully arrested CM#1. It was also alleged that NE#1 failed to Mirandize CM#1.

Administrative Note:

The arrest allegation (SPD Policy 6.010-POL-1) was approved for expedited investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue a recommended finding based solely on its intake investigation without interviewing the named employee with respect to that allegation. As such, OPA did not interview the named employee about that allegation. On August 29, 2024, OIG certified OPA's expedited investigation as thorough, timely, and objective.

The remaining allegations underwent a full investigation. On December 9, 2024, OIG certified OPA's full investigation as thorough, timely, and objective.

A discipline meeting was held on January 10, 2025, at which representatives of OPA and the named employees' chain of command were present. A robust discussion was held concerning the recommended findings in this case. Among other things, the discussion emphasized had NE#1 followed SPD's CMIC policy that the aspects of professionalism would likely not have occurred and the importance of training to the policy. For the reasons set forth below, OPA amended its recommended finding for Named Employee #1, Allegation #3 from Sustained to Not Sustained – Training Referral.

Summary of Investigation:

A. OPA Complaints

In July and August 2024, six complainants submitted OPA complaints, describing NE#1's escalated and dangerous response to a peaceful climate protest at Amazon headquarters. They reported that NE#1 operated an unmarked police vehicle into the protest site, where protesters had placed makeshift cones for safety purposes. They alleged that NE#1 exhibited uncontrollable behavior by yelling at the protesters to vacate the street, toppling stacked props, driving dangerously close to several individuals, and driving over a painted message stenciled on the ground. They also alleged that NE#1 unlawfully arrested CM#1.

OPA investigated the complaints by reviewing body-worn video (BWV), community members' recorded videos, and incident and supplement reports. OPA also interviewed CM#1, Community Member #2 (CM#2), and NE#1.

B. Body-Worn Video (BWV) and Community Members' Recorded Videos

NE#1 did not wear BWV during his response to the protest. Other officers' BWV and community members' recorded videos captured the following:

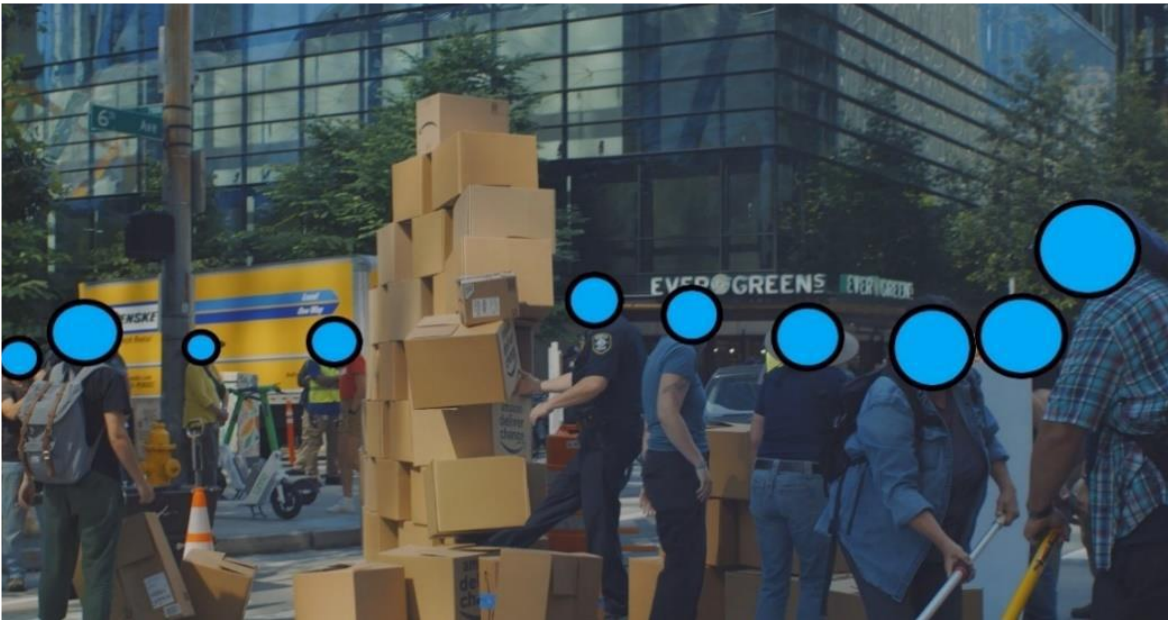
The Protest

Road closure signs, cones, and protesters donned in safety vests obstructed 6th Avenue, where the protesters assembled. Witness Officer #1's (WO#1) incident report described the protest as "very well organized and funded," citing the extensive equipment the protesters utilized, including traffic vests, cones, barrels, portable street closure light systems, large banners, and cardboard boxes. WO#1's report stated that this protest was unauthorized, as the protesters lacked

permission to close 6th Avenue. NE#1's dark grey police vehicle was stationed at the entrance for the protest.



NE#1 pushed and kicked the boxes aside.



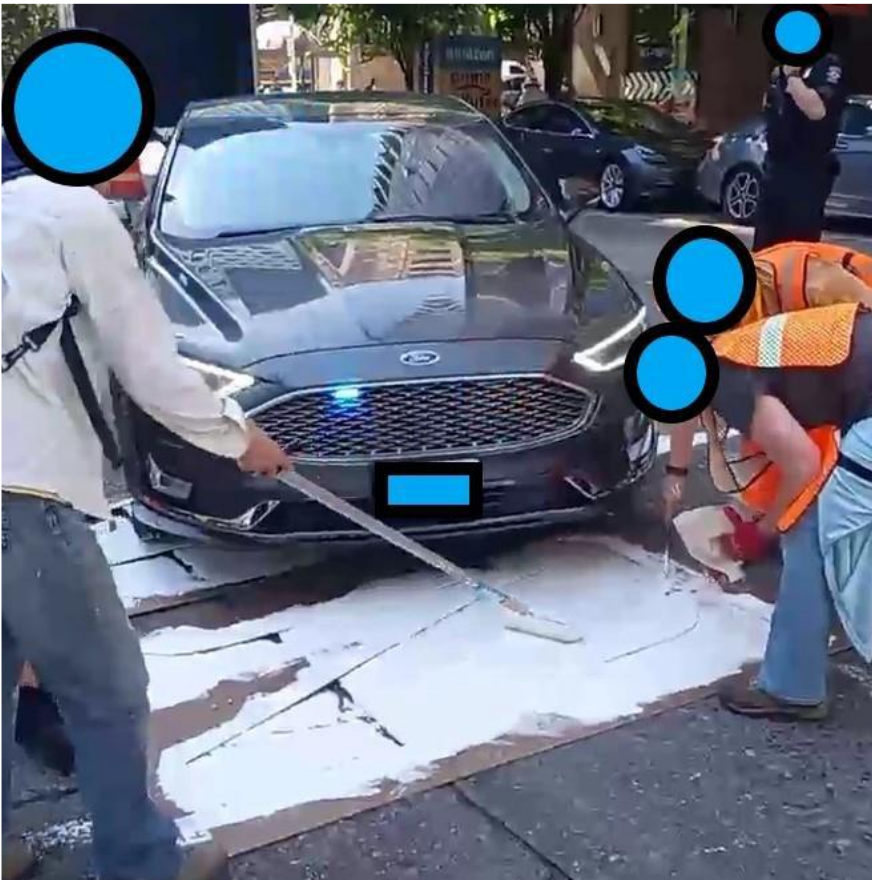
CM#1 told NE#1, "Let's talk about this for a minute." NE#1 replied, "No, we can't." CM#1 asked, "Well, why not?" NE#1 replied, "The street's being opened." NE#1 announced to the protesters, "If you remain in the street, you will be arrested." Officers moved the road closure signs aside. The protesters restacked the boxes. NE#1 entered his police vehicle, activated the siren and lights, and began to drive forward slowly. NE#1 broadcasted through a public address system, "If you block my police car, you will be arrested for obstructing justice." NE#1 broadcasted, "This road is open to traffic. Get out of the road," as he slowly approached the painted message shown below.

WO#1's incident report stated that, during a prior protest, which resulted in comparable property damage, cleanup expenses amounted to \$6,000. NE#1 drove over the word "AMAZON," then

reversed and moved toward several protesters who were applying the stencil to paint the word “ON.”



NE#1 moved closer to the protesters and broadcasted, “You must exit the street. You are endangering yourself. The street is open to vehicular traffic.”



The protesters stepped aside. NE#1 parked over the word “ON,” exited, and moved a cone aside. Protesters obstructed 6th Avenue while holding posters. NE#1 returned to the protest entrance and moved the boxes, a poster, and a cone aside.



NE#1 told the protesters, “You’re blocking traffic. You’re subject to arrest for interference.” The protesters restacked the boxes. NE#1 moved a banner aside and instructed officers to arrest anyone who attempted to move it.

An officer approached a parking enforcement officer and told him, “Start sending traffic. Captain wants it open.” Meanwhile, the protesters and their belongings continued to occupy 6th Avenue. A protester using a megaphone announced, “So, the captain has made it unsafe for us to be here, so what we’re gonna do is we’re gonna move [unintelligible].” NE#1 entered his police vehicle, activated the lights and siren, reversed slowly toward the protest entrance, and broadcasted, “This is Captain [NE#1] with the Seattle Police Department. This street is open for

vehicle traffic.” NE#1 cautioned, “Stay out of the road for your own safety.” NE#1 returned to the painted message and parked on it. Subsequently, NE#1 arrested CM#1 but failed to Mirandize him. NE#1’s supplement report stated that CM#1 repeatedly positioned himself both in front of and behind NE#1’s police vehicle, hindering its movement. It also stated that even after being warned about an arrest for obstruction and pedestrian interference, CM#1 expressed a willingness to be arrested if necessary, remained stationary, and merely shrugged his shoulders.

Following CM#1’s arrest, 6th Avenue was cleared of obstructions, allowing for vehicular traffic.

The Holding Cell

NE#1 approached a holding cell occupied by CM#1 and informed him of his impending release. NE#1 said he would recommend charges for obstructing justice and pedestrian interference, citing CM#1’s repeated refusal to move aside when requested. CM#1 disputed NE#1’s account. NE#1 recounted that he inquired whether CM#1 wanted to be taken to jail, to which CM#1 responded, “If that is what it takes.” NE#1 interpreted this as an indication that CM#1 was seeking arrest. NE#1 did not Mirandize CM#1 during this exchange.

C. OPA Interviews

Community Members

On August 6 and 7, 2024, OPA interviewed CM#1, a police liaison. CM#1 said he did not participate in the protest but facilitated communication between the police and the protesters. CM#1 described this effort as ineffective, citing NE#1 being “out of control.” CM#1 said NE#1 dismissed both him and CM#2, the other police liaison, when they attempted to engage in dialogue. CM#1 said NE#1 escalated the situation and misinterpreted CM#1’s actions as defiance, despite CM#1’s ongoing recovery from a stroke.

On August 12, 2024, OPA interviewed CM#2, a police liaison. CM#2 said the protesters had agreed to refrain from acts of violence or property damage, as they believed that a peaceful and organized approach would enhance the visibility of their message. CM#2 said officers were present and observing, but when NE#1 arrived, he made no attempts to identify or engage with the police liaisons. CM#2 said the window of NE#1’s police vehicle was closed, so he ignored de-escalation attempts. CM#2 said NE#1 did not clarify whether his commands constituted an official dispersal order. CM#2 acknowledged that the protest was unauthorized.

Named Employee #1

On November 5, 2024, OPA interviewed NE#1. NE#1 said he had undergone various trainings on crowd control tactics throughout his police and military career and had served as an incident commander for several significant events. NE#1 said SPD was under resourced and understaffed, with only one sergeant and five officers available for deployment. NE#1 said these officers had considerable experience in managing protest events. NE#1 believed the limited resources and staffing were inadequate to effectively manage the crowd.

NE#1 expressed concerns for the protesters' safety, noting that 6th Avenue remained open to vehicular traffic, so he intended to remove them from the street. NE#1 said the protesters' traffic control devices unsafely diverted traffic, gave the protesters a false sense of security, and would ineffectively prevent vehicles from entering the protest area. NE#1 recalled a 2020 protest when a vehicle drove into a crowd, resulting in fatalities. NE#1 noted that their traffic control devices misdirected vehicles into one-way roads. NE#1 said that while drivers would have noticed a large group of protesters numbering the hundreds, the approximately 25 scattered protesters were less noticeable. NE#1 described the police liaisons as unhelpful because they would not facilitate the protesters' removal, proposed opening a traffic lane into 6th Avenue, and indicated that the protest would continue for about an hour and a half. NE#1 did not categorize the protest as a crowd control situation because the number of participants was small. NE#1 estimated there were 20 to 30 protesters on the street upon his arrival, which increased to about 100 by the time he departed. NE#1 did not believe this incident implicated SPD's crowd management, intervention, and control (CMIC) policy because of the "very small crowd," so he refrained from issuing a dispersal order or employing crowd management tactics, particularly since the protesters were peaceful. However, NE#1 would have classified the protest as phase 4 under SPD's CMIC matrix.

NE#1 compared his actions to community caretaking rather than law enforcement, emphasizing his intent to protect the protesters from "immediate danger." NE#1 acknowledged instructing an officer to redirect traffic onto 6th Avenue, as he believed moving vehicles would disperse the crowd. OPA asked how removing safety barriers and redirecting traffic onto the still-occupied 6th Avenue would have ensured the protesters' safety. NE#1 characterized the traffic control devices as inadequate, failing to prevent vehicles from entering the protest area. OPA sought clarification on whether NE#1 considered removing the safety barriers and redirecting traffic onto the still-occupied 6th Avenue was a safe strategy. NE#1 replied affirmatively, noting that the protesters would be able to see the vehicles, recognize the potential danger, and consequently move onto the sidewalk. NE#1 denied having sufficient resources to implement high profile tactics, such as executing arrests if protesters interfered with signs. NE#1 said he told the officers present that they would not pursue enforcement actions like arresting the protesters. NE#1 described the protesters as nonviolent and indicated that their actions did not warrant enforcement. NE#1 expressed his frustration regarding their lack of cooperation and maintained that he conducted himself professionally during his interactions with the protesters. NE#1 denied using force or escalating the situation.

NE#1 said he arrested CM#1 but thought another officer Mirandized him. NE#1 said he did not Mirandize CM#1 because he did not carry a *Miranda* card and had not arrested anyone in several years. NE#1 recalled observing CM#1 read his *Miranda* rights at the scene and thought he witnessed the same in the holding cell. NE#1 said he did not intend to interrogate CM#1 while he was in the holding cell. NE#1 said he intended to explain the arrest and ask whether CM#1 had any questions.

Analysis and Conclusions:

Named Employee #1 – Allegation #1

6.010 – Arrests, 6.010-POL-1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

The complainants alleged that NE#1 unlawfully arrested CM#1.

Officers must have probable cause that a suspect committed a crime when effectuating an arrest. SPD Policy 6.010- POL-1. Stated differently, where an arrest is not supported by probable cause, it violates law and department policy. Probable cause exists when the facts and circumstances within an officer’s knowledge sufficiently support a reasonable belief that an offense has been or is being committed. See *State v. Fricks*, 91 Wash.2d 391, 588 P.2d 1328 (1979); *State v. Gluck*, 83 Wash.2d 424, 426–27, 518 P.2d 703 (1974).

NE#1 had sufficient probable cause to arrest CM#1 for intentionally obstructing NE#1’s police vehicle. NE#1 issued multiple warnings to CM#1, indicating that his persistent actions would lead to his arrest. CM#1 acknowledged that, despite these warnings, he told NE#1, “If that is what it takes,” indicating an intent to continually obstruct NE#1’s police vehicle. At a minimum, this behavior amounted to obstruction, justifying CM#1’s arrest.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained – Lawful and Proper (Expedited)**

Named Employee #1 – Allegation #2

6.150 – Advising Persons of Miranda and the Right to Counsel, 6.150-POL-1 Advising Miranda Rights, 2. Miranda Warnings Must Precede Custodial Interview

It was alleged that NE#1 failed to Mirandize CM#1.

Sworn employees must give *Miranda* warnings before questioning a person who is in custody. SPD Policy 6.150-POL-1(2). Custodial interrogation means “express questioning or other actions or words by a law enforcement officer which are reasonably likely to elicit an incriminating response from an individual and occurs when reasonable individuals in the same circumstances would consider themselves in custody.” RCW 10.122.020(1).

Although NE#1 failed to Mirandize CM#1 following his arrest, NE#1 did not question CM#1 at the protest site. NE#1 also did not appear to question CM#1 in the holding cell. There, NE#1 explained the arrest and asked whether CM#1 had any questions. NE#1 also conveyed that CM#1 would be released. While such statements did not appear to indicate custodial interrogation, NE#1, or an officer under his command, should have Mirandized CM#1 at the protest site. See SPD Policy 6.150-POL-1(1) (requiring sworn employees to Mirandize all arrestees “as soon as practical”).

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with him, review SPD Policy 6.150- POL-1(1) with him, and provide any other retraining and counseling it deems necessary. Any retraining and counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained – Training Referral**

Named Employee #1 – Allegation #3

5.001 – Standards and Duties, 5.001-POL-10. Employees Will Strive to be Professional

The complainants alleged that NE#1 escalated the situation.

SPD employees must “strive to be professional.” SPD Policy 5.001-POL-10. Further, “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers,” whether on or off duty. *Id.* Employees will avoid unnecessary escalation of events, even if those events do not end in reportable uses of force. *Id.* Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward anyone. *Id.*

A preponderance of the evidence established NE#1's actions unnecessarily escalated a protest that NE#1 acknowledged was peaceful and organized, although not intentionally. Upon his arrival at the protest site, NE#1 engaged in escalatory behavior by pushing and kicking boxes; displacing protest materials, including signs, banners, and traffic control devices; unnecessarily driving over wet paint; driving alarmingly close to several protesters who were painting on 6th Avenue; driving into the protest site and reversing with his lights and siren activated; and repeatedly stated the protesters with arrest. CM#1 also attempted to engage in dialogue with NE#1, but NE#1 refused to negotiate, saying, “The street's being opened.” Although NE#1 stated he prioritized community caretaking, his actions were more indicative of command and control. NE#1 See SPD Policy 5.001-POL (“The Department expects all employees to ... remember that community caretaking is at times the focus, not always command and control”).

Participants in the discipline meeting discussed, had NE#1 followed the CMIC Matrix, it would have aided him in not escalating events. Obtaining voluntary compliance, modulation, and other steps prior to command and control tactics is important. Also, it was discussed that NE#1 had the right to arrest people if they had not complied or failed to move. Additionally, that if protesters did not move, it would have been unsafe. However, it was emphasized at the meeting the importance of de-escalation. “Employees will avoid unnecessary escalation of events” See SPD Policy 5.001-POL- 10.

OPA finds NE#1's conduct was not a willful violation of this policy in review of the totality of the circumstances, as NE#1 did not willfully escalate matters and knew it would be an unsafe situation for the protestors if the road was opened. In retrospect NE#1 should have taken more time and implement the CMIC Matrix. Also, he should not have escalated matters, as the professionalism policy discusses. OPA amended its recommended finding for NE#1 from Sustained to Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with him, review SPD Policy 5.001- POL-10 with him, and provide any other retraining and counseling it deems necessary. Any retraining and counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained – Training Referral**

Named Employee #1 – Allegation #4

14.090 – Crowd Management, Intervention, and Control (Effective April 24, 2023)

The complainants alleged that NE#1 mishandled SPD's response to the protest.

The incident commander will use the CMIC matrix. SPD Interim Policy 14.090-POL-5 (effective April 24, 2023). Depending upon the situation, the law enforcement response can range from observation and/or crowd management strategies to crowd intervention and control strategies, as outlined in the CMIC matrix. *Id.* The CMIC matrix is a guide for the incident commander and allows for agility in police action in response to dynamic crowd events. *Id.*

The incident commander will employ crowd management strategies before and during an event, whenever feasible. SPD Interim Policy 14.090-POL-6 (effective April 24, 2023). Crowd management means strategies and tactics that employ communication and dialogue with event leaders to obtain voluntary compliance with lawful orders and allow for minimal enforcement action. SPD Interim Policy 14.090-POL-2 (effective April 24, 2023). The incident commander will consider strategies in the CMIC matrix when planning and managing an event. SPD Interim Policy 14.090-POL-6 (effective April 24, 2023).

Phase 4 of the CMIC matrix states that individual violent acts within the crowd, property damage, unpermitted traffic disruption, and defacement are not protected activities. SPD Interim Policy 14.090 (effective April 24, 2023). However, isolated unlawful activity by individuals or small groups within a crowd should not automatically form the basis for declaring an assembly unlawful. *Id.* Phase 4 police responses include attempting to use organizers and monitors to gain voluntary compliance; isolating, arresting, and removing law violators as quickly as possible; recording officers and law violators; using amplified sound to communicate intent or gain compliance; using low profile tactics when possible; effecting necessary arrests; using reasonable, necessary, and proportional force to effect necessary arrests; identifying and tracking subjects for later arrest when an immediate arrest is not possible; and continuing to assess and modulate response as behavior changes. *Id.*

As a threshold matter, SPD's CMIC policy applied to this protest, contrary to NE#1's understanding. The policy recognizes that "assemblies in Seattle may range from small gatherings" to "permitted celebratory and/or protest marches" or "large-scale, unpermitted demonstrations where activities outside of First Amendment protections, including significant traffic disruption, property destruction, and/or threats of violence may require a greater police presence." SPD Interim Policy 14.090-POL-1 (effective April 24, 2023). The policy also recognizes that any public assembly of individuals or groups, whether lawful or unlawful, may require law enforcement support or intervention. SPD Interim Policy 14.090-Pol-5 (effective April

24, 2023). The determination of the policy's applicability to a protest does not consider the number of individuals present. Here, the estimated 20 to 30 protesters that NE#1 observed upon arrival constituted an assembly, a small gathering, or an unpermitted demonstration, thereby triggering the provisions of SPD's CMIC policy.

A preponderance of the evidence established NE#1's violation of SPD's CMIC policy. Among the various police responses available for phase 4, NE#1 opted for only one: using an amplified sound to communicate intent or gain compliance. NE#1 failed to seek voluntary compliance through two police liaisons, failed to use low-profile tactics, and did not assess or modulate response as behavior changed. Aside from arresting CM#1 for obstruction, NE#1 did not execute additional arrests due to a lack of resources for enforcement actions and because the peaceful protesters' conduct did not justify such measures. Overall, NE#1 inadequately employed phase 4 police responses.

Policy also permitted NE#1 to consider police responses available at lower phases. See SPD Interim Policy 14.090 (effective April 24, 2023) ("Any police responses available at a lower phase remain available as a response at higher phases"). Nevertheless, NE#1 did not take advantage of these lower-level police responses. For instance, NE#1 failed to determine the group's history and risk (phase 1); failed to engender facilitation, not confrontation (phase 1); did not monitor or assess crowd behavior (phase 2); did not develop an incident action plan and objectives (phase 2); and failed to utilize police outreach and engagement team officers for communication with event organizers and stakeholders (phase 3). Overall, NE#1 inadequately employed police responses available for phases 1 through 3.

The evidence showed that NE#1 arrived at the protest site without coordinating a strategy with the officers present. NE#1 took a command-and-control approach by engaging directly with the crowd, displacing protest materials, threatening arrests to those who did not vacate the road, and operating his police vehicle unsafely within the protest area. These actions were inconsistent with the police responses outlined in the CMIC matrix. Moreover, the most troubling aspect of NE#1's "plan" was to force the protesters off 6th Avenue by removing traffic control devices and redirecting traffic onto that street. Although NE#1 claimed that his goal was to protect the protesters from "immediate danger," the execution of his plan would have, in fact, placed them in "immediate danger." OPA acknowledges NE#1 has completed various trainings on crowd control tactics throughout his police and military career and has experience as an incident commander. Additionally, that there was limited staffing. Nevertheless, the CMIC matrix should have been employed which would have assisted him.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**